

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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ROBERT CHARLES JONES,

Plaintiff,

v.

PERRY RUSSELL, *et al.*,

Defendants.

Case No. 3:23-cv-00343-MMD-CSD

ORDER

Pro Se Plaintiff Robert C. Jones brings this civil-rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Northern Nevada Correctional Center. (ECF No. 7.) On October 4, 2023, this Court ordered Jones to file a fully complete application to proceed *in forma pauperis* for a non-inmate ("IFP application") or pay the full \$402 filing fee on or before November 3, 2023. (ECF No. 6.) On November 15, 2023, the Court extended the deadline for Jones to either pay the filing fee or file an IFP application to December 15, 2023. (ECF No. 12.) Jones was warned the action could be dismissed if he failed to either file an IFP application for a non-inmate or pay the full \$402 filing fee for a civil action by that deadline. (*Id.* at 1.) The extended deadline has expired, and Jones has not paid the \$402 filing fee, filed an IFP application for a non-inmate, or otherwise responded.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party's failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th

1 Cir. 1987) (dismissal for failure to comply with court order). In determining whether to
2 dismiss an action on one of these grounds, the Court must consider: (1) the public's
3 interest in expeditious resolution of litigation; (2) the Court's need to manage its docket;
4 (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of
5 cases on their merits; and (5) the availability of less drastic alternatives. *See In re*
6 *Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
7 *Malone v. U.S. Postal Serv.*, 833 F.2d at 130).

8 The first two factors, the public's interest in expeditiously resolving this litigation
9 and the Court's interest in managing its docket, weigh in favor of dismissal of Jones's
10 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
11 because a presumption of injury arises from the occurrence of unreasonable delay in filing
12 a pleading ordered by the court or prosecuting an action. *See Anderson v. Air West*, 542
13 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
14 cases on their merits—is greatly outweighed by the factors favoring dismissal.


15 The fifth factor requires the Court to consider whether less drastic alternatives can
16 be used to correct the party's failure that brought about the Court's need to consider
17 dismissal. *See Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
18 that considering less drastic alternatives *before* the party has disobeyed a court order
19 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
20 Cir. 2002). Courts "need not exhaust every sanction short of dismissal before finally
21 dismissing a case, but must explore possible and meaningful alternatives." *Henderson v.*
22 *Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot realistically
23 proceed until Jones either files a fully complete IFP application or pays the \$402 filing fee
24 for a civil action, the only alternative is to enter a third order setting another deadline. But
25 the reality of repeating two ignored orders is that it often only delays the inevitable and
26 squanders the Court's finite resources. The circumstances here do not indicate that this
27 case will be an exception. Setting a third deadline is not a meaningful alternative given
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1 these circumstances. The fifth factor thus favors dismissal. Having thoroughly considered
2 these dismissal factors, the Court finds that they weigh in favor of dismissal.

3 It is therefore ordered that this action is dismissed without prejudice based on
4 Plaintiff Robert Charles Jones's failure to file a fully complete IFP application for a non-
5 inmate or pay the full \$402 filing fee in compliance with this Court's October 4, 2023 and
6 November 15, 2023 orders.

7 It is further ordered that the Clerk of Court is directed to enter judgment accordingly
8 and close this case. No other documents may be filed in this now-closed case. If Robert
9 Charles Jones wishes to pursue his claims, he must file a complaint in a new case and
10 either pay the required filing fee or properly apply for *in forma pauperis* status.

11 DATED THIS 19th Day of December 2023.

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15 MIRANDA M. DU
16 CHIEF UNITED STATES DISTRICT JUDGE
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